Closing Medicaid Eligibility Loopholes

During 2002, Indiana Medicaid adopted regulations to close some of the common eligibility loopholes used to shelter assets.

Annuities (405 IAC 2-3-1.2)
The purchase of an annuity within the 3 year look back period will result in a transfer penalty unless the annuity is:

- Actuarially sound (repay purchase price within life expectancy)
- Issued by a commercial entity or a nonprofit organization
- Have substantially equal monthly payments (vary by 5% or less per year)

Requirements apply to annuities purchased or annuitized on or after June 1, 2002.

[This regulation's intent was to shut down the practice of purchasing an annuity with a minimal monthly payout with a large lump sum final payment.]

Transfer of Income (405 IAC 2-3-1.1)

- A penalty will be imposed for renting property for less than fair market value.
- A penalty will be imposed for transferring income streams, including income-producing property if the transferor doesn't retain the income.
- Transfers between spouses are allowed.
- Partnership protected assets may be transferred, once protected, without penalty.

Applies to transfers taking place, or leases entered into or renewed, on or after June 1, 2002.

Transfer Penalty for Inaction (405 IAC 2-3-1.1)

- Failing to take action to receive assets to which an individual is entitled is considered a transfer. (Example – failing to elect to take the spousal share of an estate)
- No penalty will be imposed if: (a) the individual is unaware of his/her right to receive assets, (b) individual is not competent and has no guardian to act on his/her behalf, (c) taking action is not cost-effective, (d) for a surviving spouse if the deceased spouse made other equivalent arrangements to provide for the surviving spouse.

U.S. Savings Bonds (405 IAC 2-3-23)

As of November 2002, savings bonds are considered to be available and thus countable resources for Medicaid eligibility purposes beginning on the date of purchase.

In addition to the above rules, the Indiana legislature passed the following law:

Liens (IC 12-15-8.5)

Indiana Medicaid was given authority to place a lien on the real property of a Medicaid recipient who is in a nursing facility or other institution and is not expected to return home. The lien is enforced if the property is sold or upon the death of the Medicaid recipient. No lien is permitted if any of the following people reside on the property:

- recipient's spouse
- recipient's child who is under age 21
- recipient's disabled child
- recipient's sibling who has lived in the home for 12 months and has an ownership interest
- recipient's parent
- any individual (other than a paid caregiver) who resided in the home for 2 years and provided care to the recipient that delayed nursing home admission.

A lien may not be enforced while the recipient is survived by a spouse, a minor or disabled child, or a parent, even if those individuals do not live on the property.

The law includes a provision of $125,000 per recipient exemption on property subject to a lien. The exemption expires in 2008.

This law became effective January 1, 2003.